An ACCOUNT OF THE PROCEEDINGS and ARGUMENTS of the Counsel on both Sides, concerning the PLEA of

Mr. Fitz-Harris,

To his INDICTMENT of

High Treason,

At the Kings-Bench-Bar *in* Westminster-Hall, *on* Saturday May *the 7th.* 1681.

THIS day Mr. *Edward Fitz-Harris* was again brought to the Kings-Bench Bar: And, it being a Remarkable Case, there was a very numerous Auditory, and divers Lords, and Persons of Quality; as the Duke of *Monmouth*, the Earl of *Shaftsbury*, Sir *Robert Clayton*, Mr Sheriff *Cornish*, &c. The Court was set between 8 and 9 a Clock in the Morning, and Mr. Attorney General maintained his Demurrer.

First, *Because, They had made a General Plea.*

Secondly, *There was no Record mentioned in the Impeachment.*

Mr. *Williams*, the late Speaker of the House of Commons, being the first That argued the Prisoner's Plea, made a very learned Discourse, and cited many Precedents to confirm it; The Substance whereof was to make out,

That, the Attourney General, and the KING's Counsel by their Demurrer *did prove the Truth of Their Plea: and, That the Parliament had a Right to impeach any Commoner. Asserting likewise the Dignity and Excellency of Parliaments: and the Respect that in all Ages had been paid thereunto, both as to the Jurisdiction of the Lords, and likewise to the Rights and Privileges of the Commons: and that when at any time heretofore any such weighty Matters came before the Judges, they wholy declin'd being concern'd therein, or were at least very tender in their Determination.*

Sir *Francis Winnington*, being next, insisted upon the same Plea, and confirmed it with Three Reasons:

I. *That*

I. *That the Commons in* PARLIAMENT *were the Representatives of* ALL *the People of England, and consequently All the People have a ſhare in their Impeachment: and, therefore can neither be Judg nor Jury.*

II. *He compared the Impeachment to an Appeal, and, that it was to be heard before an Indictment for the King: And, That by the Third of* Henry *the VII. in caſe of Murder, The King could not proceed in an Indictment, till a year and a day was allowed for an Appeal.*

III. *The Queſtion is, whether, if* Fitz-Harris *be Tryed here and Acquitted, that will be a ſufficient Plea, if the Lords call him to an Account for the ſame; and that, if they could, it was contrary to our Law, in regard it would put a man in jeopardy of his Life twice for the ſame Crime, it being the Birth-right of an* Engliſh-Man *to anſwer but once for the ſame thing.*

Mr. *Wallop* and Mr. *Pollexfen* backt it with Precedents: *As particularly in the Caſe of the Earl of* Stafford, *and the reſt of the Lords in the* Tower, *who being Impeached in Parliament, it was concluded by all the Judges in* England, *That they could not be Tryed elſewhere: And likewiſe in the Caſe of the Earl of* Shaftsbury, *who being committed Priſoner to the* Tower *by the Houſe of Lords, only for a miſdemeanour, yet it was reſolved by the Court of* Kings-Bench, *that they could take no Cognizance thereof.*

Mr. Attorney preſſed the inſufficientcy of their Plea, and, that the Demurrer ought to be Granted; adding, *That if it were contrary to Law, God forbid it ſhould be done*: and farther ſaid, That, in his Judgment, that Court had Power to Try him.

The Sollicitor General laboured to make it appear, That a man might be Tryed twice for the ſame thing, and that an Appeal and an Indictment might be within a year and a day.

Sir *George Jefferies* ſaid, That the Plea was defective in Matter and Form, and that every man ought to ſearch his own Conſcience, and not be Bugbear'd out of his Reaſon, nor to decline doing Juſtice for fear of being called to an Account hereafter; and prayed his Lordſhip that it might be over-ruled.

Sir *Francis Withins* and Mr. *Saunders* ſpake alſo what they thought neceſſary to that point.

After which the Lord Chief Juſtice told them, He had heard all their Arguments, but thought it beſt to take a farther time to give in his Judgment, and not to run precipitately into matters of that nature, it being a Cauſe of great weight, and variety of Preſidents having been alledged on both ſides, and that it did therefore require deliberate Conſideration to adviſe upon all that had been ſaid, before the Court gave their Opinion in the Caſe, and hereupon the Judgment of the Court was deferred, and no certain day aſſigned.

It is Diſcourſed that Mr. *Fitz-Harris* being withdrawn, a motion was made that his Wife might have Liberty to go to ſee him, as ſhe had done lately, but that it was objected ſhe had abuſed her Liberty in that Caſe; but the reſult thereof we know not.

FINIS.

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